

**FILED**

**MAR 31 2022**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

CARMELITA REEDER SHINN, CLERK  
U.S. DIST. COURT, WESTERN DIST. OKLA.  
BY                     , DEPUTY

ALTON NOLEN,

Petitioner,

v.

JIM FARRIS, Warden,  
Oklahoma State Penitentiary,

Respondent.

Case No. CIV-22-272-F

**MOTION FOR APPOINTMENT OF COUNSEL**

Petitioner Alton Nolen, through counsel, respectfully requests that this Court appoint the Federal Community Defender Office for the Eastern District of Pennsylvania ("FCDO") to represent him pursuant to 18 U.S.C. § 3599(a)(2) in these capital proceedings. The FCDO has been contacted by the supervising attorney of the Capital Habeas Unit in this district, requesting that we seek an appointment in this case. She has indicated that due to multiple impending execution dates and other case responsibilities, her office cannot accept an appointment for Mr. Nolen. The Federal Defender for this district, Susan Otto, also supports our appointment.

In support of this motion, counsel sets forth the following:

1. Mr. Nolen was convicted of First-Degree Malice Murder in the District Court in Cleveland County, Oklahoma, and was sentence to death. Case No. CF-2014-1792. Mr. Nolen's convictions and death sentence were affirmed on direct appeal by the Oklahoma Supreme Court on March 18, 2021. *Nolen v. State*, 2021 OK CR5, 485 P.3d 828 (Ok. 2021). His request for *certiorari* was denied on November 22, 2021. *Nolen v. Oklahoma*, 142 S.Ct. 566 (2021).
2. Mr. Nolen's timely filed original application for capital post-conviction relief was denied by the Oklahoma Supreme Court on January 27, 2022. *Nolen v. State*, PCD-2018-215.

Mr. Nolen's federal statute of limitations is now running and his federal habeas petition must be filed by January 2023.

3. Section 3599, 18 U.S.C., provides for the appointment of counsel in federal capital trial proceedings and post-conviction proceedings under 28 U.S.C. §§ 2254 and 2255.

*Harbison v. Bell*, 556 U.S. 180, 184 (2009). Subsection (a)(2) provides:

In any post-conviction proceeding under section 2254 or 2255 of title 28, United States Code, seeking to vacate or set aside a death sentence, any defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of one or more attorneys and the furnishing of such other services in accordance with subsections (b) through (f).

Petitioner, Mr. Nolen, wishes to file a petition for habeas corpus pursuant to 28 U.S.C. § 2254.

He is indigent and is qualified for the appointment of counsel. He has agreed to the appointment of the FCDO and has signed the relevant *in forma pauperis* paperwork, which is attached as Exhibit A.

4. The FCDO is recognized by the Administrative Office of the United States Courts (AO) as a Community Defender Organization pursuant to 18 U.S.C. § 3006(A) of the Criminal Justice Act. *See* Addendum to the Plan for the Implementation of the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A, of the United States District Court for the Eastern District of Pennsylvania. Since 1995, the FCDO has received a sustaining grant from the AO to represent death-sentenced prisoners in federal habeas corpus and clemency proceedings and maintains a unit of attorneys and support staff who specialize in post-conviction litigation.

5. Because of its sustaining grant, the FCDO will not request from this Court any funds for attorney fees, investigation or travel expenses, expert witness expenses, or any other expenses.

6. As with all out-of-district appointments, and in accordance with protocol, the FCDO has requested pre-approval to seek an appointment in this case from the Administrative Office of Courts, Defender Services Office. On March 30, 2022, that Office approved the FCDO's request to seek an appointment to represent Mr. Nolen. Pursuant to the Defender Services Office's protocol regarding requests to seek out-of-district appointments, Chief Judge Timothy Tymkovich of the United States Court of Appeals for the Tenth Circuit was notified of the potential appointment of the FCDO and interposed no objection.

7. The FCDO is well situated to represent Mr. Nolen because it has a Capital Habeas Unit with federal habeas capital litigators, investigators and paralegals who have extensive experience litigating federal capital habeas proceedings pursuant to 28 U.S.C. §§ 2254 and 2255.<sup>1</sup> Additionally, the FCDO has experience in this district and in the Tenth Circuit. *See Hancock v. Carpenter*, Civ-08-327-F (W.D. OK); *United States v. Fields*, 949 F.3d 1240 (10<sup>th</sup> Cir. 2019). One of our Assistant Federal Defenders also previously served as a law clerk in the United States Court of Appeals for the Tenth Circuit; she will be assigned to this case in the event the Court grants the appointment motion.

---

<sup>1</sup> The office's lawyers have served on the faculties of death penalty and habeas corpus training seminars for numerous organizations and entities including, *inter alia*, the Administrative Office of the United States Courts Habeas Corpus Training and Assistance Project, the National Institute for Trial Advocacy, the NAACP Legal Defense & Educational Fund, the American Bar Association's Death Penalty Representation Project, the Pennsylvania Bar Institute, the National Association of Criminal Defense Lawyers, and the Pennsylvania Association of Criminal Defense Lawyers.

8. The Capital Habeas Unit of the FCDO is supervised by Shawn Nolan, who has twenty years of experience exclusively representing capital habeas litigants. Mr. Nolan's contact information is as follows:

Shawn Nolan  
Chief, Capital Habeas Unit  
Federal Community Defender Office  
Eastern District of Pennsylvania  
601 Walnut Street, Suite 545W  
(215) 928-0520  
[shawn\\_nolan@fd.org](mailto:shawn_nolan@fd.org)

WHEREFORE, Mr. Nolan respectfully requests that this Court appoint the FCDO as counsel in this case. A proposed order is attached.

Respectfully submitted,

Shawn Nolan  
Chief, Capital Habeas Unit  
Federal Community Defender Office  
Eastern District of Pennsylvania  
601 Walnut Street, Suite 545W  
(215) 928-0520  
[shawn\\_nolan@fd.org](mailto:shawn_nolan@fd.org)